

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRUSTEES of the CHICAGO REGIONAL
COUNCIL OF CARPENTERS PENSION
FUND, et al.

Plaintiffs,

Case No. 08 CV 3019

Judge Guzman

V.

PRIMO INSTALLATIONS, INC.

Defendant.

MOTION FOR DEFAULT JUDGMENT

Plaintiffs, by its attorney, Daniel P. McAnally, move this Honorable Court to enter Judgment by Default according to Fed. R. Civ. P. 55 for Defendant's failure to appear, answer or otherwise plead. Further, in support of this Motion the Plaintiffs state:

1. Plaintiffs filed their complaint on May 23, 2008 and the summons and complaint was served on James J. Lukacek, registered agent on June 4, 2008 via the Process Server. **(Exhibit A, affidavit of service)**

2. The Defendant has failed to appear, answer or otherwise plead within the time allowed by the Fed. R. Civ. P.

3. At all times relevant to this action, the Defendant has been bound by the provisions of a Collective Bargaining Agreement and the Trust Agreements which created the Trust Funds. Pursuant to the provisions of the Trust Agreements and the Collective Bargaining Agreement, the Defendant is required to submit monthly reports to the Trust Funds which list the number of hours worked by the Defendant's employees and to pay the ERISA contributions based on those hours.

4. The Defendant submitted the monthly contribution reports but failed to submit the ERISA contributions shown to be owed in the amount of \$11,867.95 for the months of December 2007 through June 2007. The Defendant also failed to remit the union dues it withheld from the employees' wages. The amount of dues withheld is \$768.18 for the period March 2007 through June 2007. **(Exhibit B, affidavit of James Rosemeyer)**

5. The Defendant owes interest on the unpaid ERISA contributions in the amount of \$110.63 pursuant to the Trust Agreements and 29 U.S.C. §1132(g)(2)(B). **(Exhibit B)**

6. The Defendant owes liquidated damages on the unpaid ERISA contributions in the amount of \$2,938.49 for the period August 2007 through June 2007 pursuant to the Collective Bargaining Agreements, the Trust Agreements and 29 U.S.C. §1132(g)(2)(C)(ii). **(Exhibit B)**

7. The Defendant owes the sum of \$1,995.00 for necessary and reasonable attorney fees and costs of \$405.00 which are collectible under the terms of the Collective Bargaining Agreement, the Trust Agreements and 29 U.S.C. §1132(g)(2)(D). **(Exhibit C, affidavit of Daniel P. McAnally)**

WHEREFORE, Plaintiffs pray that their motion for judgment by default be granted in the amount of \$18,085.25.

Respectively submitted,

s/ DANIEL P. McANALLY
Attorney for Plaintiffs

Whitfield McGann & Ketterman
111 E. Wacker Drive
Suite 2600
Chicago, IL 60601
312/251-9700

EXHIBIT LIST

EXHIBIT A

Affidavit of Service, Special Process Server

EXHIBIT B

Sworn Declaration Pursuant To 28 U.S.C.A. § 1746
James Rosemeyer, Contributions Manager

EXHIBIT C

Sworn Declaration Pursuant To 28 U.S.C.A. § 1746
Daniel P. McAnally, Plaintiffs Attorney

Exhibit A

Exhibit A

AO 440 (Rev. 05/00) Summons in a Civil Action

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

SUMMONS IN A CIVIL CASE

TRUSTEES of the REGIONAL COUNCIL OF
CARPENTERS PENSION FUND, WELFARE FUND
and APPRENTICE & TRAINEE PROGRAM FUND

CASE NUMBER:

08CV3019 EDA
JUDGE GUZMAN
MAGISTRATE JUDGE DENLOW

V.

ASSIGNED JUDGE:

PRIMO INSTALLATIONS, INC.

DESIGNATED
MAGISTRATE JUDGE:

TO: (Name and address of Defendant)

PRIMO INSTALLATIONS, INC.
c/o JAMES J. LUKACEK, REGISTERED AGENT
218 TIOGA AVENUE
BENSENVILLE, IL 60106

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

DANIEL P. McANALLY
WHITFIELD McGANN & KETTERMAN
111 E. WACKER DRIVE
SUITE 2600
CHICAGO, IL 60601

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

NOTE: When the print dialogue
box appears, be sure to uncheck
the Annotations option.

Michael W. Dobbins, Clerk

Caprianna Arnold
(By) DEPUTY CLERK

May 23, 2008

Date



ClientCaseID: N76890DPM
Law Firm ID: WHITFIEL



CaseReturnDate: 6/23/08

Affidavit of Special Process Server

UNITED STATES DISTRICT COURT

Case Number **08CV3019**

I, **ERIC L. BEY**

FIRST DULY SWORN ON OATH STATES THAT I AM OVER 18 YEARS OF AGE AND NOT A PARTY TO THIS SUIT AND IS A REGISTERED EMPLOYEE OF ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION PRIVATE DETECTIVE AGENCY #117-001292 STERN PROCESS & INVESTIGATION LLC 205 W. RANDOLPH ST. #1210 CHICAGO IL 60606

CORPORATE SERVICE

THAT I SERVED THE WITHIN **SUMMONS AND COMPLAINT**
ON THE WITHIN NAMED DEFENDANT **PRIMO INSTALLATIONS, INC.**
PERSON SERVED **JAMES J. LUKACEK, REGISTERED AGENT**
BY LEAVING A COPY OF EACH WITH THE SAID DEFENDANT ON **6/4/08**

That the sex, race and approximate age of the person whom I left the **SUMMONS AND COMPLAINT**
are as follow:

Sex **MALE** Race **WHITE** Age **56**
Height **5'9** Build **LARGE** Hair **GREY**

LOCATION OF SERVICE **218 TIOGA AVE**
BENSENVILLE, IL, 60106

Date Of Service **6/4/08** Time of Service **9:03 PM**

ERIC L. BEY

6/5/2008

Special Process Server
P.E.R.C.#129-303704

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statement are true and correct, except as to matters therein stated to be on information and belief and such matters the undersigned certifies as aforesaid that he/she verily believes same to be true.

Exhibit B

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRUSTEES of the CHICAGO REGIONAL
COUNCIL OF CARPENTERS PENSION
FUND, et al.

Plaintiffs,

Case No. 08 CV 3019

V.

Judge Guzman

PRIMO INSTALLATIONS, INC.

Defendant.

SWORN DECLARATION PURSUANT TO 28 U.S.C.A. § 1746

James Rosemeyer declares as follows:

1. I am the Manager of the Employer Contributions Department for the Chicago Regional Council of Carpenters Pension Fund and the Chicago Regional Council of Carpenters Welfare Fund ("Trust Funds") and in such capacity I am authorized to make this Declaration on behalf of the Trust Funds.

2. The Defendant executed an Agreement with the Chicago and Northeast Illinois Regional Council of Carpenters ("Union") whereby it agreed to be bound by the provisions of a Collective Bargaining Agreement and to all Collective Bargaining Agreements subsequently negotiated.

3. Pursuant to the provisions of the Agreement and the Collective Bargaining Agreements, the Defendant agreed to be bound by the provisions of the Agreements and Declarations of Trust, which created the Plaintiffs' Trust Funds.

4. Pursuant to the provisions of the Collective Bargaining Agreements and Trust Agreements, the Defendant is required to submit monthly reports which list the number of hours worked by its carpenter employees and the Defendant is required to pay contributions based upon the hours listed.

5. The Defendant submitted the contribution reports for the period December 2007 through June 2007 but did not pay the contributions. The reports show that \$11,867.95 is owed in ERISA contributions. The Defendant also failed to remit the union dues it withheld from the employees' wages. The amount of dues withheld is \$768.18 for the period March 2007 through June 2007.

6. Because of its failure to pay contributions in a timely manner, the Trust Agreement and Collective Bargaining Agreement mandate the assessment of liquidated damages. The liquidated damages calculation was based on the rate set forth in the controlling Trust Agreements, which is 1.5% compounded per month. The amount of liquidated damages owed is \$2,938.49 for the period August 2007 through June 2007.

7. The interest calculation is based on the ERISA Section awarding such interest, 29 U.S.C. §1132(g)(2) and because the relevant Trust Agreements do not specify the rate of interest, the calculations were done pursuant to Section 6621 of the Internal Revenue Code. The amount of interest owed is \$110.63.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in this Declaration is true and correct.

Dated: July 29, 2008

Signature: James Rosema

7/22/2008

Primo Installations, Inc.
 1101 Caton Farm Road
 Lockport, IL 60441

Account # 24055

<u>Contributions</u>	<u>Liquidated Damages</u>	<u>Dues</u>	<u>Interest</u>
Aug-07	\$537.28		
Sep-07	\$320.82		
Oct-07	\$20.42		
Nov-07	\$264.31		
Dec-07 \$700.00	\$184.67		\$22.35
Jan-08	\$571.57		
Feb-07 \$310.95	\$619.22		\$6.28
Mar-07 \$2,937.00	\$180.22	\$206.31	\$43.24
Apr-07 \$2,640.00	\$120.59	\$187.29	\$25.76
May-07 \$2,640.00	\$79.79	\$187.29	\$12.28
Jun-07 <u>\$2,640.00</u>	<u>\$39.60</u>	<u>\$187.29</u>	<u>\$0.72</u>
\$11,867.95	\$2,938.49	\$768.18	\$110.63

Exhibit C

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRUSTEES of the CHICAGO REGIONAL
COUNCIL OF CARPENTERS PENSION
FUND, et al.

Plaintiffs,

V.

PRIMO INSTALLATIONS, INC.

Defendant.

Case No. 08 CV 3019

Judge Guzman

SWORN DECLARATION PURSUANT TO 28 U.S.C.A. § 1746

Daniel P. McAnally declares as follows:

1. I am an associate of the law firm of Whitfield & McGann and am licensed to practice law in the State of Illinois and in the U.S. Dist. Court for Northern District of Illinois, Eastern Division.
2. I have personal knowledge of the facts stated herein and if called to testify in this matter, I can competently testify to such facts from my own such knowledge.
3. I have in excess of 13 years experience representing trustees of employee benefit plans, including the prosecution of Federal Court litigation to collect delinquent employer contributions.
4. The Collective Bargaining Agreement and the Trust Agreements under which this action is based provide for the payment of attorneys' fees and costs incurred if the Trust Funds utilize legal counsel to collect unpaid ERISA contributions.
5. I have devoted 11.40 hours in connection with the this case at the rate of \$175.00 per hour. The total attorney fees billings is \$1,995.00.

6. In addition, the filing fee was \$350.00 and the fees for service of process were an additional \$55.00. These costs total \$405.00.

7. I certify that the attached detailed attorney fees and costs totaling \$2,400.00 were necessary and reasonable.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in this Declaration is true and correct.

Date: July 29, 2008

s/ DANIEL P. McANALLY

Attorney for the Trustees of the Chicago
Regional Council of Carpenters Pension Fund,
et al.

7/28/2008
3:31 PMWHITFIELD, McGANN & KETTERMAN
Slip Listing

Page 1

Selection Criteria

Case (hand select) Include: CTF-C./N7690
 Slip Classification Open
 Case (hand select) Include: CTF-C./N7690
 Slip Transaction Ty 1 - 1

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	ATTORNEY Activity Case Reference	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
358584	TIME			DPM	1.00	175.00	175.00
5/22/2008				Billable	0.00	T@7	
Billed	G:73606	6/2/2008		CTF-C./N7690	0.00		
			Review referral from Trust Funds; prepare database and load information regarding case facts, history and legal strategy. Prepare/ Open file for litigation; review corporate status and registered agent information for legal process.		0.00		
358585	TIME			CPW	0.00	175.00	
5/22/2008				Lexis	0.00	A@1	
Billed	G:73606	6/2/2008		CTF-C./N7690	0.00		
			LEXIS FEE: Search Illinois Secretary of State database for corporate information including registered agent of the corporation for purposes of service; search for related companies; perform asset search of company and principals.		0.00		
358586	TIME			DPM	2.00	175.00	350.00
5/23/2008				Billable	0.00	T@7	
Billed	G:73606	6/2/2008		CTF-C./N7690	0.00		
			Prepare summons, complaint, appearance forms and civil cover sheet for Trust Funds' claims and compliance matters pursuant to ERISA Sec. 1132, 1145 and Taft-Hartley Act Sec. 301.		0.00		
358587	TIME			DPM	0.50	175.00	87.50
5/23/2008				Billable	0.00	T@7	
Billed	G:73606	6/2/2008		CTF-C./N7690	0.00		
			Prepare the complaint, civil cover sheet, appearance and summons for electronic filing; file the documents; confirm the court clerk received the documents.		0.00		
358588	TIME			DPM	0.50	175.00	87.50
5/30/2008				Billable	0.00	T@7	
Billed	G:73606	6/2/2008		CTF-C./N7690	0.00		
			Review email from the United States District		0.00		

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Slip Listing

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Slip ID	Dates and Time	ATTORNEY Activity	Units DNB Time	Rate Rate Info	Slip Value
	Posting Status	Case Reference	Est. Time	Bill Status	
	Description		Variance		
	Court regarding the electronically filed complaint, summons and civil cover sheet; download the documents, print and enclose in the file; update file regarding the filing date, assigned judge and assigned magistrate.				
358589	TIME	DPM	1.00	175.00	175.00
5/30/2008		Billable	0.00	T@7	
Billed	G:73606 6/2/2008	CTF-C./N7690	0.00		
	Prepare correspondence to legal process server Scott Forrest Stern & Associates, Inc. regarding service of the summons and complaint on the defendant; prepare correspondence to James Rosemeyer, ERISA Contributions Manager, Chicago District Council of Carpenters' Trust Funds regarding the filling of the complaint; enclose copy of the summons and complaint; docket follow-up dates for service.		0.00		
358905	TIME	DPM	0.25	175.00	43.75
6/2/2008		Billable	0.00	T@7	
Billed	G:73811 7/1/2008	CTF-C./N7690	0.00		
	Review e-mail sent by the U.S. Dist. Court for the Northern Dist. of Illinois regarding MINUTE entry before the Honorable Ronald A. Guzman: The Court orders the parties to appear for an initial status hearing. All parties shall refer to and comply with Judge Guzman's requirements for the initial appearance as outlined in Judge Guzman's case management procedures; download documents to the file folder; print document and enclose in file.		0.00		
359472	TIME	DPM	0.70	175.00	122.50
6/11/2008		Billable	0.00	T@7	
Billed	G:73811 7/1/2008	CTF-C./N7690	0.00		
	Telephone conference with Earl E. Oliver, Field Representative, Chicago Regional Council of Carpenters of Trust Funds regarding the nature of the lawsuit and what is required; correspondence to Earl E. Oliver, Field Representative, Chicago Regional Council of Carpenters of Trust Funds regarding same; copy trust fund contributions manager, James Rosemeyer.		0.00		
361540	TIME	DPM	0.50	175.00	87.50
7/21/2008		Billable	0.00	T@7	
WIP		CTF-C./N7690	0.00		

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Slip Listing

Page 3

Slip ID	Dates and Time	ATTORNEY Activity	Units DNB Time	Rate Rate Info	Slip Value
	Posting Status	Case Reference	Est. Time	Bill Status	
	Description		Variance		
	Prepare correspondence to Earl E. Oliver, Field Representative, Chicago Regional Council of Carpenters of Trust Funds regarding status.		0.00		
361644	TIME	DPM	0.50	175.00	87.50
7/21/2008		Billable	0.00	T@7	
WIP		CTF-C./N7690	0.00		
	Review Scott Forrest Stern & Assoc., Inc.'s report on service of the summons and complaint; review process server remarks regarding details of service; review affidavit of service for legality; electronically file the proof of service with the clerk of the U.S. Dist. Court for the Northern Dist. of Illinois; docket follow-up dates for Answer due date.		0.00		
361561	TIME	DPM	0.70	175.00	122.50
7/22/2008		Billable	0.00	T@7	
WIP		CTF-C./N7690	0.00		
	Review correspondence from Earl E. Oliver, Field Representative, Chicago Regional Council of Carpenters of Trust Funds regarding status of the past payments; correspondence to Oliver requesting calculation of liquidated damages and interest pursuant to the terms of the trust agreements and Internal Revenue Code.		0.00		
361563	TIME	DPM	0.40	175.00	70.00
7/22/2008		Billable	0.00	T@7	
WIP		CTF-C./N7690	0.00		
	Prepare for court status/motion hearing; review file for current status and most recent activity; telephone conversation with trust fund regarding status of the litigation; review court docket to confirm that the case will be called for status.		0.00		
361565	TIME	DPM	0.10	175.00	17.50
7/22/2008		Billable	0.00	T@7	
WIP		CTF-C./N7690	0.00		
	Telephone conversation with trust fund contributions manager, James Rosemeyer regarding status of the litigation.		0.00		
			1.0		175.00
361637	TIME	DPM	0.00	175.00	0.00
7/23/2008		Billable	0.00	T@7	
WIP		CTF-C./N7690	0.00		
	Attend court appearance at the U.S. District Court for the Northern District of Illinois before Judge Guzman.		0.00		

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3:32 PMWHITFIELD, McGANN & KETTERMAN
Slip Listing

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Slip ID	ATTORNEY	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Case	Est. Time	Bill Status	
Description	Reference	Variance		
361877 TIME	DPM	2.00	175.00	350.00
7/25/2008	Billable	0.00	T@7	
WIP	CTF-C./N7690	0.00		
Review court file to determine if Answer filed; review office file for Answer; confirm Answer due dates; review U. S. District Court website to verify the date and time that the presiding Judge hears motions; prepare motion for default judgment pursuant to F. Rul. Civ. P. 55 for failure to Answer or otherwise plead.		0.00		
361856 TIME	DPM	0.25	175.00	43.75
7/28/2008	Billable	0.00	T@7	
WIP	CTF-C./N7690	0.00		
Review e-mail sent by the U.S. Dist. Court for the Northern Dist. of Illinois regarding SUMMONS Returned Executed by Chicago Regional Council of Carpenters Pension Fund, Chicago Regional Council of Carpenters Welfare Fund, Chicago Regional Council of Carpenters Apprentice & Trainee Program Fund as to Primo Installations, Inc. on 6/4/2008, answer due 6/24/2008; download documents to the file folder; print document and enclose in file.		0.00		

Grand Total

Billable	1.00	2,000.00
Unbillable	0.00	0.00
Total	1.00	2,000.00

11.40 @ 175 \$1,995.00

Filing Fee 350.00

Process Server 55.00

\$ 2,400.00

STERN PROCESS & INVESTIGATION, LLC

Tax ID 04-3801615

205 W. RANDOLPH ST 730

CHICAGO, IL, 60606

Phone (312)-853-2150

Fax (312)-853-3119

Customer

WHITFIELD, MCGANN & KETTERMAN

111 E WACKER DRIVE 2600

CHICAGO, IL, 60601

Phone: (312)-251-9700

Fax: (312)-251-9701

Invoice# 187655

Date Of Invoice: 6/5/2008

Plaintiff: TRUSTEES OF THE REGIONAL COUNCIL OF CARPENTERS PENSION FUND

Court CaseID: 08CV3019

Firm# N76890DPM

Case Returned Date: 6/23/08

County: UNITED STATES DISTRICT COURT

Process Server: ERIC L. BEY

ProcessType: SUMMONS AND COMPLAINT

Defendant:#1 PRIMO INSTALLATIONS, INC.

Type Of Service: CORPORATE SERVICE

Person Served: JAMES J. LUKACEK, REGISTERED

Date Of Service: 6/4/2008

Time: 9:03 PM

Sex MALE

Age 56

Height 5'9

Build LARGE

Hair Color GREY

Race WHITE

Defendant:#2

Type Of Service:

Person Served:

Date Of Service:

Time:

Sex

Age

Height

Build

Hair Color

Race

Location 218 TIOGA AVE , BENSENVILLE, IL, 60106

Type Of Premise: HOUSE

Delivery Charge

\$55.00

Rush

\$0.00

Bad Address

\$0.00

Filing

\$0.00

No Contact

\$0.00

Investigation

\$0.00

Database/Skip

\$0.00

Advanced fees

\$0.00

Total:**\$55.00**

Date Received

Check No

Amount Received

\$0.00

Balance Due

\$55.00

INFORMATION DEEMED RELIABLE BUT NOT GUARANTEED

PAYABLE UPON RECEIPT, 2% PER MONTH